

STATE OF WISCONSIN

CIRCUIT COURT  
Branch

DANE COUNTY

BOB LEHMANN, President, and  
MILWAUKEE TEACHERS'  
EDUCATION ASSOCIATION  
5130 West Vliet Street  
Milwaukee, WI 53208,

MICHAEL DREYER  
4800 Ivywood Trail  
McFarland, WI 53558,

HEDY REYNOLDS  
325 Trowbridge Drive, PO Box 1195  
Fond du Lac, WI 54936,

JOLENE SMANEY  
1136 North Military Avenue  
Green Bay, WI 54303, and

WISCONSIN EDUCATION  
ASSOCIATION COUNCIL  
33 Nob Hill Drive, PO Box 8003  
Madison, WI 53708-8003,  
Plaintiffs,

v.

EMPLOYEE TRUST FUNDS BOARD,  
DEPARTMENT OF EMPLOYEE TRUST  
FUNDS, and  
ERIC O. STANCHFIELD, Secretary,  
801 West Badger Road  
Madison, WI 53702

Defendants.

Case No. \_\_\_\_\_

DECLARATORY JUDGMENT  
Case Code 30701

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**COMPLAINT**

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Plaintiffs BOB LEHMANN, MILWAUKEE TEACHERS' EDUCATION

ASSOCIATION, MICHAEL DREYER, HEDY REYNOLDS, JOLENE SMANEY, AND WISCONSIN EDUCATION ASSOCIATION COUNCIL, by their attorneys, PERRY, SHAPIRO, QUINDEL, SAKS, CHARLTON & LERNER, S.C., by Barbara Zack Quindel and B. Michele Sumara, allege as follows:

**Parties**

1. Plaintiff Bob Lehmann is a teacher employed by the Milwaukee Public Schools, a participating employee in the Wisconsin Retirement System (WRS), and the president of the Milwaukee Teachers' Education Association (MTEA). His principal place of business is at 5130 West Vliet Street, Milwaukee, WI 53208.

2. Plaintiff MTEA is the collective bargaining representative of Milwaukee teachers who are employee participants in the WRS. The MTEA's principal place of business is at 5130 West Vliet Street, Milwaukee, WI 53208.

3. Plaintiff Michael Dreyer is a teacher employed by the Stoughton Area School District, a participating employee in the WRS, and a member of defendant Wisconsin Education Association Council (WEAC). His principal place of business is at 4800 Ivywood Trail, McFarland, WI 53558.

4. Plaintiff Hedy Reynolds is a teacher employed by the Fond du Lac School District, a participating employee in the WRS, and a member of WEAC. Her principal place of business is at 325 Trowbridge Drive, PO Box 1195, Fond du Lac, WI 54936.

5. Plaintiff Jolene Smaney is an educational support professional employed by the Oconto Falls School District, a participating employee in the WRS, and a member of WEAC. Her principal place of business is at 1136 North Military Avenue, Green Bay, WI 54303.

6. Plaintiff WEAC is an unincorporated labor association representing approximately 85,000 members who are participants in the WRS. WEAC's principal place of business is at 33 Nob Hill Drive, PO Box 8003, Madison, WI 53708-8003.

7. Defendant EMPLOYE TRUST FUNDS BOARD (ETF Board) is responsible for the general direction and supervision of defendant DEPARTMENT OF EMPLOYE TRUST FUNDS (DETF). Defendant ETF Board's principal place of business is at 801 West Badger Road, Madison, WI 53702.

8. Defendants DETF and ERIC O. STANCHFIELD, Secretary of DETF, are responsible for the administration of the WRS, pursuant to sec. 40.03(2) and ch. 75, Stats. Defendants DETF and Secretary Stanchfield's principal place of business is at 801 West Badger Road, Madison, WI 53702.

#### **Basis of the Request for Declaratory Relief**

9. This is an action for a declaratory judgment, pursuant to sec. 806.04, Stats.

10. The purpose of this action is to determine whether defendants' implementation of the employer credits of Act 11, sec. 27(1)(b)1 contravene the unambiguous language of Act 11, sec. 27(1)(b)1 and are an invalid exercise of defendants' authority.

11. On December 16, 1999, the legislature enacted Act 11, which made changes to benefits provided under WRS and to the financial structure of the WRS.

12. The legislature enacted nonstatutory provisions in Act 11 creating a credit balance of \$200 million, which the ETF Board was directed to allocate to each participating employer in a share based on that employer's percentage of the 1998 total WRS payroll. Act 11, Sec. 27(1)(b).

13. In unambiguous language, Sec. 27(1)(b)1 directs defendant ETF Board to deduct

from each employer's reserve account on a monthly basis an amount that the employer would otherwise have contributed, thereby giving the affected employers a holiday from certain monthly contributions until their credit balance is exhausted. Act 11, Sec. 27(1)(b)1 reads, as follows:

The employe trust funds board shall determine each participating employer's share of the increase in the accumulation reserve that results from the distribution under paragraph (a) and shall establish for each employer a credit balance in the employer accumulation reserve that equals the employer's share of the increase in the employer accumulation reserve that results from the distribution under paragraph (a), based on each employer's share of covered payroll in 1998. The total amount that shall be reserved for credit balances under this subdivision shall be \$200,000,000. In lieu of requiring that an employer make required employer contributions under section 40.05(2)(b) of the statutes, the employe trust funds board, beginning no later than March 1, 2000, shall deduct from the employer's credit balance in the employer accumulation reserve, on a monthly basis, an amount that the employer would otherwise have been required to contribute under section 40.05(2)(b) of the statutes had there been no establishment of the credit balance from the distribution under paragraph (a). For any employer that is not required to make contributions under section 40.05(2)(b) of the statutes, the employe trust funds board, beginning no later than March 1, 2000, shall deduct from the employer's credit balance in the employer accumulation reserve, on a monthly basis, an amount that the employer would otherwise have been required to contribute under section 40.05(2)(a) of the statutes had there been no establishment of the credit balance from the distribution under paragraph (a). The employe trust funds board shall make such deductions until the credit balance is exhausted, at which time the employer shall resume making all required employer contributions.

(emphasis added)

14. Following enactment, numerous provisions of Act 11, including sec. 27(1)(b)1, were challenged and were found to be constitutional in a decision issued on June 12, 2001.

*Wisconsin Prof'l Police Ass'n, Inc. v. Lightbourn*, 2001 WI 59, 243 Wis. 2d 512, 627 N.W.2d 807.

15. Pursuant to the unambiguous language of Act 11, deducting the employer credits on a monthly basis creates a monthly holiday from certain WRS contributions until the credit balance is exhausted, thereby providing employer funds for other purposes.

16. Pursuant to the unambiguous language of Act 11, monthly credit holidays result in reduced monthly WRS contributions which require employer school districts to recalculate the Qualified Economic Offer (QEO), under the formula of sec. 111.70(1)(nc), Stats., thereby freeing funds for teacher salary increases.

17. On June 22, 2001, the DETF issued *Employer Bulletin* vol. 18, No. 8, explaining the Act 11 employer credits.

18. DETF's *Employer Bulletin* vol. 18, No. 8 also instructed employers that, contrary to the unambiguous language of the Act requiring employer credits to be deducted on a monthly basis, the Act 11 credits could be taken *three* ways: on a monthly basis, in a lump sum, and/or by delaying use of the credit.

19. The DETF Act 11 employer credit instructions in the *Employer Bulletin* vol. 18, No. 8 are not a rule and are not subject to the procedures for the promulgation of rules, as set forth in ch. 227, Stats.

20. DETF did not treat the Act 11 employer credit instructions in the *Employer Bulletin* vol. 18, No. 8 as a rule in formulating them and did not follow the procedures for the promulgation of rules, as set forth in ch. 227, Stats.

21. The DETF instructions to employers that the Act 11 credits may be taken by means other than on a monthly basis adversely affect plaintiff employee participants in that employers will not have additional funds for potential wage increases, as contemplated by Act 11.

22. The DETF instructions to school district employers that the Act 11 credits may be taken by means other than on a monthly basis adversely affect plaintiff teachers, in that school district QEO calculations will not reflect additional funds available for increased teacher salaries.

23. A judgment in this action will terminate the controversy giving rise to this proceeding.

WHEREFORE, plaintiffs seek judgment against defendants declaring and ordering the following:

(A) The unambiguous language of Act 11, Sec. 27(1)(b)1 requires the ETF Board to apply the employer credits on a monthly basis;

(B) The DETF Act 11 implementation instructions of June 22, 2001 to participating employers contravene the unambiguous language of Act 11, Sec. 27(1)(b)1, are an invalid exercise of defendants' power to implement Act 11, and are outside the scope of defendants' authority;

(C) Defendants are enjoined from implementing the June 22, 2001 instructions to employers which allow employer credits in any manner except on a prospective, monthly basis, from the date on which the Supreme Court lifted the injunction on implementation of Act 11;

(D) Defendants are ordered to correct the implementing instructions to employers to comport with the unambiguous statutory language of Act 11, such that:

(1) For an employer required to make contributions under sec. 40.05(2)(b), Stats., the ETF Board will deduct from the employer's credit balance in the employer accumulation reserve, on a monthly basis, an amount that the employer would otherwise have been required to contribute under sec. 40.05(2)(b), Stats., had there been no establishment of the credit balance from the distribution under Act 11 ¶27(1)(a);

(2) For any employer that is not required to make contributions under Sec. 40.05(2)(b), Stats., the ETF Board will deduct from the employer's credit balance in the

employer accumulation reserve, on a monthly basis, an amount that the employer would otherwise have been required to contribute under sec. 40.05(2)(a), Stats., had there been no establishment of the credit balance from the distribution under Act 11 ¶27(1)(a); and

(3) The employee trust funds board shall make such deductions until the credit balance is exhausted, at which time the employer shall resume making all required employer contributions.

(E) Defendants are ordered to make any adjustments necessary to restore employer credit balances in any employer accounts which were affected by implementation of Act 11 pursuant to defendants' invalid implementing instructions;

(F) Costs are awarded to plaintiffs;

(G) And any further relief as the Court deems appropriate.

Date: November 13, 2001

PERRY, SHAPIRO, QUINDEL, SAKS,  
CHARLTON & LERNER, S.C.  
Attorneys for Plaintiffs

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